

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

AMERICAN RED CROSS GREATER
ALLEGHENIES REGION BLOOD SERVICES¹

Employer

and

Case 6-RC-12647

TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS LOCAL
UNION NO. 110 a/w INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, American Red Cross Greater Alleghenies Region Blood Services, is engaged in the collection, testing and distribution of blood and blood products at its facility in Johnstown, Pennsylvania. The Petitioner, Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 110 a/w International Brotherhood of Teamsters, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit, as amended at the hearing, of all full-time and regular part-time non-professional hourly employees employed in the Employer's Johnstown, Pennsylvania lab, including Technical Specialist I-Components, Shift Coordinators-Components, Technical Specialist I-Quarantine and Labeling, Technical Specialist II-Quarantine and Labeling, Technical Specialist II-Quality Control, PESA Specialist II and PESA Specialist III; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

¹ The name of the Employer appears as amended at the hearing.

A hearing officer of the Board held a hearing and the parties filed timely briefs with me. At the hearing and in their briefs, the parties disagree as to the composition of the unit. Initially, the Employer asserts that the Hospital Services Specialist Is ("HSSI"), HSSIs-Customer Service and Inventory Manager must be included in any unit found appropriate. The Petitioner contends that these employees have a separate community of interest such that their inclusion in the petitioned-for unit is not required. The parties also differ as to the placement of the PESAII Specialists and the PESAIII Specialist.² The Petitioner seeks to include the PESAII and PESAIII Specialists on the basis of their shared community of interest with the employees involved in Components and Quarantine and Labeling. The Employer contends that the employees in these classifications do not share a sufficient community of interest with the employees in the other petitioned-for classifications to warrant their inclusion in the unit.

Finally, the parties are in disagreement as to the supervisory status of the Technical Specialist ("TS") IIIs and the Shift Coordinators. The Petitioner, contrary to the Employer, asserts that the TSIIIs must be excluded from any unit found appropriate herein as they are statutory supervisors. As to the Shift Coordinators, the Employer, contrary to the Petitioner, asserts that these individuals are statutory supervisors who must be excluded from the unit.

The Petitioner has indicated a willingness to proceed to an election in any unit found appropriate. The unit sought by the Petitioner has approximately 73 employees, while the unit the Employer contends is the smallest appropriate unit would include approximately 89 employees. There is no history of collective bargaining for any of the employees involved herein.

I have considered the evidence and arguments presented by the parties on the issues. As discussed below, I have concluded that the employees in the unit petitioned for herein do not constitute an appropriate unit for the purposes of collective bargaining and that the record compels a finding that the HSSIs, HSSI-Customer Service and Inventory Manager must be included in the unit. With respect to the PESAII and PESAIII Specialists, I am unable to determine with certainty whether

² PESA stands for product, equipment and supply assessment.

these employees share a sufficient community of interest to warrant their inclusion in the unit found appropriate, and therefore I shall permit them to vote subject to challenge in the election directed herein. Finally, I have concluded that, based on the record, the burden of establishing that either the Shift Coordinators or TSIIIs are supervisors within the meaning of the Act has not been met. Therefore, these positions should be included in the unit herein. Accordingly, I have directed an election in a unit that consists of approximately 92 employees. To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports my conclusions on the issues.

I. OVERVIEW OF OPERATIONS

The national headquarters of the American Red Cross is maintained in Washington, DC. The organization is divided into two major divisions: Disaster Relief and Biomedical Services. Biomedical Services is further split into 7 subdivisions and 36 blood service regions, one of which is the American Red Cross Greater Alleghenies Region Blood Services, the Employer involved herein.³ The Employer's facility involved herein is located in Johnstown, Pennsylvania, and consists of a building covering 135,000 square feet.⁴ The Employer is engaged in the business of blood collection and other blood-related services, which services are provided to hospital customers and other regions of the American Red Cross. These services are provided at the Employer's central facility in Johnstown, Pennsylvania, at various mobile sites (via van type mobile units) and via the establishment of temporary "bloodmobiles" at fixed sites (such as community halls and churches) and, to a limited degree, at the hospitals to which it provides services. Included within the blood-related services are patient apheresis and therapeutic phlebotomies, which involve patient care.

³ At the hearing, the parties stipulated, and I find, that the Employer is a health care institution within the meaning of Section 2(14) of the Act inasmuch as the Employer performs therapeutic apheresis and therapeutic phlebotomies on a regular basis. See Syracuse Region Blood Center, 302 NLRB 72, 73 (1991).

⁴ The Greater Alleghenies Region is part of the Heritage Division. The Heritage Division is headquartered at the Employer's Johnstown, Pennsylvania, facility.

The work performed by the employees in the petitioned-for unit takes place primarily on the first floor of the facility. The second floor is used for administrative offices.

The Employer's operations involved in this proceeding take place in the Product Management Department⁵ and involves certain employees from the Operations Support Department. The Product Management Department is responsible for the processing of units of blood which have been collected by collections personnel who are not involved in the instant proceeding,⁶ and the shipment of products to hospital customers. The Employer also has an Operations Support Department at the facility. One area within this department is Regulated Support Services, which functions to maintain and repair equipment used by collections specialists and staff and by employees working in the Product Management Department.

The Product Management Department is overseen by Director of Manufacturing John Deshane.⁷ Within the Product Management Department are several areas. They are: Components, Quarantine and Labeling, Quality Control and Hospital Services⁸ areas. Each of these four areas is headed by an assistant director who reports to Deshane. Thus, the employees in the Product Management Department share common supervisors at the level of the department director.

The Components area⁹ and the Hospital Services area operate on a 24-hour-per-day, seven-day-per-week basis. The Quarantine and Labeling and Quality Control areas operate on a 24-hour-

⁵ Product management is also referred to as manufacturing.

⁶ In Case 6-RC-11347, the Communications Workers of America, AFL-CIO was certified to represent a non-professional unit which includes various collections specialists. This union was notified of the processing of the instant petition, and responded by letter indicating that it did not claim an interest in the proceeding. The classifications of employees involved herein are not included in the unit represented by the CWA.

⁷ Deshane reports to Chief Manufacturing Executive Pamela Miles-Sharp, who in turn reports to Vice President of Manufacturing Kay Crull. Both Miles-Sharp and Crull are employed by the national headquarters of the American Red Cross.

⁸ There are seven hospital service specialists who work at a service location in Huntington, West Virginia, which is within the geographical boundaries of the Heritage Division. The parties stipulated that these hospital service specialists should be excluded from any unit found appropriate herein.

⁹ The components area is also referred to in the record as the components lab.

per-day basis on weekdays and a somewhat reduced schedule on weekends. The Employer's manufacturing process takes place in the GMP,¹⁰ or envelope area, which is a restricted area to which only the approximately 100 employees working in these areas have access.¹¹ The limited access to the GMP is necessary because the blood products could cause contamination in case of container breakage or spills. The functions that take place "within the envelope" are the components manufacturing, quarantine and labeling, quality control, hospital services, inventory management,¹² equipment maintenance and reference lab. The employees who work in the GMP wear a lab coat, closed-toed shoes, gloves and, at times, a face mask.

The Operations Support Department is overseen by Division Director-Operations Support Lisa Dell. Manager-Regulated Support Services Jason Elchin reports to Dell. Among Elchin's direct reports are one PESA Specialist III and two PESA Specialist IIs. The other areas within this department are the Facilities, Fleet area, and the Warehousing, Kitting and Transportation area. These two areas are managed by Tom Lindrose, who reports to Division Director Facilities Ed Bauman. Bauman, like Elchin, reports to Dell.

Both hourly and salaried employees receive the same benefits package, which includes health benefits, eye and dental insurance, sick leave and vacation. The Employer also has a pension plan. There is a common lunch room at the facility and two break areas which can be used by any employee at the facility. The Employer has one set of work rules for all employees.

The Employer has a system of pay grades covering all of the positions at the facility. The pay grades for the hourly employees involved herein are pay grades 5, 7 and 8.¹³ All hourly

¹⁰ GMP stands for Good Manufacturing Practices.

¹¹ A total of about 250 employees work at the facility.

¹² The parties agree that the nonprofessional employees in the GMP work only in the four areas described above, as well as in equipment maintenance where the disputed PESA employees repair and maintain equipment.

¹³ Each pay grade has a wage range. Grade 5 employees earn between \$11.61 to \$19.71 per hour. Grade 7 employees earn between \$15.58 and \$24.75 per hour, and Grade 8 employees earn between \$17.18 and \$27.72 per hour.

employees punch one of two time clocks which are located at either entrance to the facility. Supervisors are salaried.¹⁴ The record reflects that hourly paid employees receive double-time if they work on a holiday. Supervisors who work on a holiday receive holiday bonus payments.

A. Product Management Department

1. Components

a. Technical Specialist Is

The Components area operates continuously. There are 45 Technical Specialist Is (“TSIs”) working in the Components area. A Components Supervisor works on each of the three shifts, and there are three or four Shift Coordinator positions.¹⁵ Both the Components Supervisors and the Shift Coordinators report directly to Assistant Director-Product Management Components Linda Schmall.

Whole blood, red blood cells and/or platelet products are collected by the collections staff, working in blood mobiles or at fixed sites throughout the region. These products are then delivered to the Employer’s Components laboratory and are received at the receiving dock or window¹⁶ at one end of the lab. The TSIs are responsible for reviewing paperwork to ensure that every item listed in the shipment is, in fact, delivered.

Once this is completed, the processing or breaking down of products into components¹⁷ begins. Processing includes hanging and segmenting the blood and spinning the blood in centrifuges to separate plasma and platelets from red blood cells. In addition, the TSIs perform leukoreductions, which is the filtering of blood to remove white blood cells. The TSIs then “express”,

¹⁴ The beginning salary for a supervisor is equivalent to \$21 per hour.

¹⁵ At the time of the hearing, only one of the shift coordinator positions was filled by Shift Coordinator Bob Newlin, who works on the 3 p.m. to 11:30 p.m. shift. However two TSIs, Mike Maslo and Mark Dowdell, had accepted shift coordinator positions and were scheduled to begin working in those positions shortly after the hearing concluded.

¹⁶ The window is used for small deliveries.

¹⁷ Whole blood is broken down into red blood cells, plasma and cryoprecipitate.

rack and store the product in the appropriate date order in the freezers, refrigerators or platelet chambers located in the GMP.¹⁸

Certain TSIs in Components are trained to apply the blood type and Rh factor label, a function which is usually performed by Hospital Services staff, as will be described *infra*. Other TSIs in Components prepare and deliver samples to the Quality Control area. Until about six months prior to the hearing in this matter, TSIs in Components also performed irradiation of products. This function was transferred to the Hospital Services Specialists who work in the Hospital Services area. The TSIs are compensated at pay grade 5.

b. Shift Coordinators

Also working in Components are the Shift Coordinators whose status is in dispute. The record reflects that Shift Coordinators have no authority to hire, transfer, suspend, lay off, recall, promote or discharge employees or to adjust their grievances¹⁹ or to effectively recommend such actions. In its brief, the Employer contends that the Shift Coordinators are supervisory employees based on their authority to assign and responsibly direct employees and to effectively recommend rewards and discipline for other employees through their involvement with the work performance assessment process. Specifically, the Employer contends that the Shift Coordinators are supervisory employees based on the fact that they regularly substitute for the Components Supervisors. According to the Employer, the Shift Coordinators also exercise independent judgment when they assign work, responsibly direct employees and effectively recommend employee rewards or discipline through their involvement in the work performance assessment process. The Employer also asserts that Shift Coordinators determine whether to hold over TSIs for overtime to complete production, and that they can also call TSIs to come to work early if there appears to be insufficient staff to complete the day's production. The Employer also notes the existence of secondary

¹⁸ Depending on the particular requirements, each product is either frozen, refrigerated or stored at room temperature. Each product has a certain timeframe within which it must be transfused.

¹⁹ Although Chief Manufacturing Executive Pamela Miles-Sharp testified generally that Shift Coordinators have the ability to resolve employee disputes, there is no evidence in the record that any Shift Coordinator has done so or has been informed of any authority in this regard.

supervisory indicia. Shift Coordinators attend a daily supervisory meeting. They also have a cubicle in the office area and are compensated at pay grade 7.

Job Description

The job description of the Components Shift Coordinator sets forth the Shift Coordinator's responsibility to ensure that production goals are met with minimum overtime, as well as the ability to perform supervisory override on the computer²⁰ and to provide input in components staff performance reviews and annual competency assessments.

Substitution for Supervisors

As noted, the components area operates continuously. There is a Supervisor on each of the three shifts. Shift Coordinators fill in when one of the Supervisors is off on vacation or due to illness. In addition, Shift Coordinators work on weekend shifts pursuant to a rotating schedule.²¹ There is evidence in the record that a TSI was designated as being in charge of a shift when no supervisor was present and no Shift Coordinator was on duty. In that instance, the TSI had the telephone number of a Supervisor he could call at home if necessary. The record does not reflect whether Shift Coordinators are likewise provided with a telephone number of the Shift Supervisor when they are in charge. However, the record does reveal that the Employer has not communicated in writing or orally with Shift Coordinators as to their specific authorities in dealing with the TSIs.

Assigning Work and Directing Employees

The record establishes that a monthly schedule is prepared listing the duties to be performed on the shift during a particular week. The name of each TSI is then inserted next to a task. All of the TSIs can perform virtually all of the necessary tasks. The TSI duties are rotated each week for day shift employees. There is conflicting evidence in the record as to the preparation of the work schedules. According to Chief Manufacturing Executive Pamela Miles-Sharp, Assistant Director

²⁰ The Shift Coordinator can correct errors input into the computer by the TSIs.

²¹ It appears that Shift Coordinators fill in approximately every third to fifth weekend, and possibly more often during the summer months.

Schmall prepares the schedule. The current Shift Coordinator on day shift, Raeleen Rager, testified that she completes this schedule on the day shift. Rager became a Shift Coordinator in 2000 and held this position until about 2002, when she became a Supervisor for a period of about 2 years. Then, when a daylight Shift Coordinator position became available, Rager applied for the position because she wanted to work on the day shift. The record reflects that Rager began completing the schedule when she was a Supervisor, and continued completing the schedule when she took the position of Shift Coordinator on the day shift.

Bob Newlin, the Shift Coordinator on the afternoon shift, works with about 18 to 20 TSIs and one Supervisor. On this shift, the Supervisor prepares a task list, which Newlin ensures is followed.²²

With respect to overtime, the Employer utilizes a monthly “asterisk list” identifying two to three employees per shift who are expected to work overtime if necessary. Overtime usually involves working one hour or less past the normal ending time of the shift. This asterisk list is not prepared by the Shift Coordinators. Rather, it is prepared by the Supervisor. If additional employees are needed to work overtime, the Shift Coordinator will ask for volunteers. Overtime cannot be required by either Shift Coordinators or by higher management for employees whose names are not on the asterisk list.

Shift Coordinators allow employees to leave early in case of illness. If employees request to use paid time off when production is slow, Shift Coordinator Newlin asks the Supervisor, who will make the decision. Shift Coordinator Rager has apparently been authorized by her immediate Supervisor to allow employees to leave early,²³ and thus she routinely grants the request of a TSI to leave early.

²² The task list appears to be the equivalent of the schedule used on the day shift.

²³ Rager testified that her Supervisor did not wish to be bothered with such requests and told Rager to handle these matters.

The record reveals that each shift has a certain amount of production to handle, depending on the shipment of product. When TSIs are finished with their initial tasks, they move on their own initiative to assist other TSIs in order to complete the production goal. At times, the Shift Coordinator will suggest that a TSI move to assist a coworker with a certain task.

Recommending Employee Rewards and Recommending Discipline

Each employee is evaluated annually via the completion of a Work Performance Assessment Form. The employee's evaluation results in a wage increase. Employees are rated on a Scale of 1 (Unsatisfactory) to 5 (Excellent) on 11 job performance factors and 5 Red Cross core values and guiding behaviors. This form is completed by the Work Performance Supervisor and is reviewed by higher management. The Employer contends that Shift Coordinators have input into this process.

The record establishes that a Work Performance Supervisor is assigned to complete the Performance Review of each employee on the shift. In Components, the Work Performance Supervisor is either Assistant Director Schmall or the Supervisor who works on the employee's shift. The Work Performance Supervisor gathers input from other Supervisors and Shift Coordinators. The Shift Coordinators do not complete performance reviews and do not recommend the amount of any wage increase.

The record contains one instance where Shift Coordinator Rager believed she had input into the Work Performance Assessment of another employee. In that case, an employee yelled aggressively at Rager, who in turn reported this conduct to the Supervisor. Several months later the employee involved was put on probation. Rager never saw the completed Work Performance Assessment, and no Supervisor ever told Rager that her input caused the employee to be put on probation. Rager acknowledged that she did not know whether there were other incidents which caused the employee to be put on probation.

As to the recommendation of discipline, the yelling incident caused Rager to also recommend to the Supervisor that something be done about the conduct. No Supervisor ever informed Rager whether discipline was issued to the employee. However, the employee was terminated about six months to one year later. The record also indicates that Shift Coordinator

Newlin reported to his Supervisor that a TSI refused to assist with tasks during his shift. Newlin was unaware whether his report caused any follow-ups by higher management.

The Employer performs a competency assessment of each staff member every year. This involves having individuals who have undergone training to be an instructor either observe or interview each staff member about every regulated task they are trained to perform, in order to ensure that the task is being performed correctly. Competency assessments can only be performed by certified instructors who have been trained in the task to be assessed. The Employer requires all Assistant Directors, the Training Specialist, Supervisors, Shift Coordinators and TSIIIs to become certified instructors. The record reveals that any other employees in the department can, and have, become certified instructors.

2. Quarantine and Labeling

Every unit of blood delivered to the Components area is accompanied by a test tube of the donor's blood. These test tubes are sent to the Employer's national testing lab for all required FDA testing.²⁴ The seven TSIIIs in the Quarantine and Labeling area are responsible for managing and shipping all of these test tubes. Once testing has occurred, the American Red Cross national testing lab forwards all test results back to the Quarantine and Labeling area. This usually occurs within 48 hours. The test results are examined and entered into the computer system, which will generate reports to determine whether, based on these and other test results,²⁵ the products are suitable for release to labeling. Prior to release, the products are stored in refrigerators or freezers in the refrigeration area of the GMP. If a product is deemed unsuitable or needs further investigation or testing, it is removed from inventory and placed in locked quarantine until the issue is resolved.

When products are released to Labeling, the TSIIIs, TSIIIs and Supervisors sign a form called the Back to Release Checklist documenting that the required reviews have been completed and that

²⁴ The FDA requires testing for HIV and Hepatitis B. The record indicates that there are other viruses for which the Employer is not required to test. Thus, the testing is not all encompassing.

²⁵ The Quarantine and Labeling staff also enter reports regarding donor suitability, health histories, and quality control of equipment into the computer. These reports are received from Donor Suitability and the Collections Department.

the acceptable (i.e. released) product can be labeled. That signed form is given to one of eight TSIs in Labeling, who are referred to as the “labelers.” The labelers attach a blood type label so that the product can be sent on to the Hospital Services area for shipment to hospital customers. The TSIs also perform waste management, which involves tracking unsuitable product in the computer to identify it for shipment to the waste handler.

As of the time of the hearing, there were three Quarantine and Labeling Supervisors, one of whom worked on each shift. The Assistant Director-Product Management Quarantine and Labeling position was vacant.

3. Quality Control

The Quality Control area handles the testing of blood components to ensure that the components meet the determined quality control parameters. Seven TSIs perform this work in the Quality Control area. Specifically, they perform bacterial protection testing on platelet apheresis products and hematology testing on platelet apheresis donors. The TSIs report to the Quality Control Supervisor, who in turn reports to Assistant Director-Product Management Quality Control Darrell Bodenschatz. The TSIs are compensated at pay grade 7.

4. Technical Specialist IIIs

The Employer employs three TSIIIs, who report to supervision in both the Quarantine and Labeling and the Quality Control areas. The Petitioner, contrary to the Employer, contends that the TSIIIs are supervisors. The specific basis or bases for this contention are not disclosed. The TSIIIs perform all of the functions of the TSII and oversee the area in the absence of a Supervisor. The TSIIIs do not have an office and spend all of their time working side by side with the employees in Quality Control and in Quarantine and Labeling. At times, the TSIIIs attend the daily supervisory meetings.

The record establishes that these individuals can perform “supervisory reviews” of documents and test results generated by the TSIs in the Quality Control Department. This means they have undergone the training necessary to review these documents. According to the TSIII job descriptions, they are required to “rotate weekend and holiday on-call duties with Technical

Supervisors/Quarantine Review to provide department oversight and review of testing records prior to product release.” Because the Assistant Director position is currently vacant, one of the TSIIIs requested to prepare the work schedule in the Quarantine and Labeling area. The schedule is then shown to the Quarantine and Labeling Shift Supervisor.

TSIIIs are required to have a minimum of an Associate’s degree. However, one of the TSIIIs who has no degree was “grandfathered” into the job. TSIIIs are compensated at pay grade 8.

5. Hospital Services

Working in the Hospital Services area of the Production Management Department are 16 Hospital Services Specialists (HSSIs), two HSSIs-Customer Service and Inventory Manager Kim Tremain. All of these employees report to Hospital Services Supervisors William Hall and Barbara Haynai. As with other areas in the Production Management Department, there is an Assistant Director Production Management Hospital Services position, which is filled by Ron Boerstler.

The HSSIs receive labeled product from the TSIs in Quarantine and Labeling and then stock the product. The products are stocked on shelves in refrigerators in the refrigeration area, which is located between the Components area and the Quarantine and Labeling area. The product is shelved in appropriate date order²⁶ or by blood type for shipping. The HSSIs also receive orders for blood and blood components from hospital customers as well as other regions within the Employer’s structure. They then pull the appropriate products from the inventory located on shelves in the refrigerator or freezer or the platelet rotator and pack the product in boxes for shipment to the Employer’s customers.

Certain HSSIs are responsible for irradiation,²⁷ after which they relabel the product. Additional relabeling is also required for those units of plasma which the HSSIs move to

²⁶ Products are shipped out in “first in, first out” order.

²⁷ Irradiation is the exposure of blood components to gamma radiation in order to inhibit the ability of lymphocytes to respond to foreign stimulus. As noted, this duty was previously performed by the TSIs.

fractionation.²⁸ The record indicates that both TSIs from Components and HSSIs label the products to be moved to fractionation.

The record indicates that HSSIs communicate with Components TSIs regarding the status of pediatric units which are manufactured in the Components area. The HSSIs release this product on a daily basis and require information on the status of the units.

The Employer's freezers must maintain a constant temperature; otherwise the freezers "go into alarm". When this has happened, all product must be unloaded and moved to another freezer. In such instances, HSSIs and TSIs have worked together to move the product.

The Employer employs two employees classified as HSSIs-Customer Service. These employees answer the telephones and take customer orders on weekdays. The HSSIs assist the HSSIs-Customer Service with this duty on off shifts and weekends. The HSSIs-Customer Service also perform irradiation and pack orders when they are not needed to answer the telephones. The HSSIs and HSSIs-Customer Service are compensated at pay grade 5.

Working in the Hospital Services area is Inventory Manager Kim Tremain. Tremain is responsible for allocating inventory between the two distribution sites in the Greater Alleghenies Region.²⁹ Tremain also answers the telephones, takes customer orders and rotates inventory. Tremain performs no supervisory duties. Tremain is compensated at pay grade 7.

B. Operations Support Department

The Operations Support Department is overseen by Division Director, Senior Director Operations Support Lisa Dell. Reporting to Dell are Director of Facilities Ed Bauman and Interim

²⁸ It appears that fractionation is the manufacture of albumin, clotting factors and immunoglobulins. The manufacture of these reagents is performed by a separate company. The "move to fractionation" is the phrase the Employer uses to describe the packaging for shipment of certain plasma which is not needed for transfusions.

²⁹ The position was created when there were five distribution sites in the region.

Manager Regulated Support Services Jason Elchin.³⁰ Included within the Facilities portion of the department are the Facilities, Fleet area and the Materials Management, Warehousing, Kitting and Transportation area.³¹ The employees in Materials Management, Warehousing, Kitting and Transportation are drivers who travel back and forth to blood mobiles and make deliveries to hospitals. The employees in kitting gather and pack supplies into pods which are utilized by the Collections personnel. The warehousing employees purchase and receive incoming goods and perform inventory management functions.³²

In the Regulated Support Services area, Elchin supervises one PESA Specialist III and two PESA Specialist IIs, along with an administrative assistant, a secretary and two document control administrative assistants.³³ All of the regulated support services employees have cubicles or work stations on the second floor of the facility. The record establishes that the PESA Specialists use their cubicles to access e-mail and retrieve telephone messages. Otherwise they spend the vast majority of their time in a work room which is located within the GMP, at the end closest to the main doors to that area across the hall from the Components Lab.

³⁰ Regulated Support Services became part of the Operations Support Department in February 2008. Before that Elchin supervised only the PESA employees and he reported to Dell as a "stand alone" area. The record indicates that the PESA function has been organizationally assigned to various departments over the years. Immediately before becoming part of the Operations Support Department, PESA was part of Clinical Services. Approximately 6 years ago PESA was part of the Quality Control area.

³¹ Each of these areas is headed by a supervisor, who reports to Manager General Services Tim Lindrose. Lindrose reports to Bauman.

³² There are other groups of employees at the facility in the Operations Support Department, including employees working in safety and risk management who perform safety training and handle claims if an employee is injured on the job. There are also employees who work in donor data management. These employees receive blood donation records from the components laboratory. The records are reviewed and entered into the computer system. The donor data management staff also performs investigation on post-transfusion diseases and takes calls regarding post-donation information. Finally, there is a records management area where records are archived and stored.

³³ The record establishes that the two document control administrative assistants and the PESA Specialists have limited contact and that their jobs are not related in any way. The administrative assistant, secretary and document control administrative assistants are characterized by the parties as clerical employees. Neither party sought to have these employees included in the unit petitioned for herein.

The three PESA Specialists work from 8 a.m. to 4:30 p.m. on weekdays. Every third weekend, one of the PESA Specialists is on call. The PESA Specialist IIs and PESA specialist III are responsible for maintaining all regulated equipment used in the collection, processing, testing, storage and distribution of the Employer's products.³⁴ The maintenance of this equipment includes calibrations and preventative maintenance which can be scheduled on an annual, monthly or weekly basis, depending of the needs of the piece of particular equipment. PESA Specialists also perform some of the repairs on regulated equipment, but will schedule vendors to make major repairs that they are unable to perform. When a piece of equipment in the Components area is in need of a repair, either a work order form is completed or a components employee will call the PESA Specialists' office phone or workroom phone, or will simply knock on the glass door to the PESA workroom.³⁵

The PESA Specialists spend about 75 percent of their time performing repairs on equipment used in collections. Broken equipment from collection sites is brought to the facility by the delivery drivers and placed on a specific shelf in the warehouse. A PESA Specialist picks up the equipment every morning and will work on it in the PESA workroom located in the GMP. The balance of the PESA Specialists' time is spent performing repairs on equipment used in the Product Management Department.

Every Monday the PESA Specialists clean the centrifuges in the Components lab.³⁶ Due to their size, the centrifuges cannot be moved and the PESA Specialists must perform their work in the Components area where the TSIs are working. PESA Specialists are also called upon to work on the approximately 20 freezers and refrigerators in the refrigeration area of the GMP. This area is located between the Components lab and the Labeling areas. Every month the PESA Specialists

³⁴ The record establishes that there are 5,000 pieces of regulated equipment.

³⁵ The workroom is not accessible by anyone other than the PESA Specialists.

³⁶ There are 30 large centrifuges in this area.

also work in the Components lab performing preventative maintenance on heat sealers and electronic scales. In addition, PESA Specialists receive calls or work orders for equipment failure issues from one to a couple of times each week. When working on the equipment in the Components lab, the PESA Specialists are exposed to blood and blood product.

The record reveals that the PESA Specialists have less contact with the employees in the petitioned-for unit who work in the Quarantine and Labeling, Quality Control and Hospital Services areas than they have with the TSIs in the Components area. In Quarantine and Labeling, PESA Specialists perform monthly preventative maintenance on label printers and annual maintenance on the timers used in that area. In Hospital Services, PESA Specialists work on calibrated thermometers on a monthly basis. In addition, in case of a refrigerator or freezer malfunction, PESA Specialists will assist the employees working in the GMP in transferring blood and blood product to an alternate refrigerator or freezer.

When PESA Specialists are on call on nights and weekends, they are expected to provide troubleshooting advice or, in the case of a serious equipment failure, they may have to report to the facility.

The record establishes that on occasion the PESA specialists perform work offsite on equipment used by collections staff. The record reflects that PESA specialists travel to collection sites to repair and calibrate equipment on a monthly basis. The PESA specialists also perform offsite equipment inventory twice each year.

II. LEGAL ANALYSIS

A. The Appropriateness of the Petitioner's Proposed Bargaining Unit

The Act does not require that the unit for bargaining be the only appropriate unit, or the ultimate unit, or even the most appropriate unit; the Act requires only that the petitioned-for unit be appropriate. Bartlett Collins Co., 334 NLRB 484 (2001); Morand Brothers Beverage Co., 91 NLRB 409, 418 (1950). Furthermore, a union is not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that required

does not exist.” P. Ballantine & Sons, 141 NLRB 1103, 1107 (1963); Bamberger’s Paramus, 151 NLRB 748, 751 (1965). Additionally, in the health care industry, as with other industries, unions are not required to organize the most comprehensive unit available or even the most appropriate unit. They need only select an appropriate unit. Faribault Clinic, Ltd., 308 NLRB 131, 133 (1992). Although not dispositive, a petitioner’s unit desire is a relevant consideration. Marks Oxygen Company of Alabama, 147 NLRB 228, 230 (1964).

Because the Employer is a nonacute health care facility, the proper test to determine the appropriate bargaining unit is the “empirical community of interests” test. Park Manor Care Center, Inc., 305 NLRB 872, 875 fn. 16 (1991); Allen Health Care Services, 332 NLRB 1308, fn. 4 (2000). Under this test, the Board considers: 1) traditional community of interest factors; 2) those factors considered relevant to the Board in its rulemaking proceedings on Collective Bargaining Units in the Health Care Industry; 3) the evidence presented during rulemaking with respect to units in acute care hospitals; and 4) prior cases involving either the type of unit sought or the type of health care facility in dispute. Lifeline Mobile Medics, Inc., 308 NLRB 1068 (1992). Although blood bank facilities are unique and different from other health care facilities in structure, operations, and staffing, the Board, in Park Manor Care Center, noted that certain general principles applicable to unit determinations in acute care facilities are also applicable to nonacute care facilities. 305 NLRB at 876. In doing so, the Board noted that in exercising its discretion to determine appropriate units, it must steer a careful course between two undesirable extremes. If the unit is too large, it may be difficult to organize and difficult for the union to represent. If the unit is too small, it may be costly for the employer to deal with and may even be deleterious for the union by too severely limiting its constituency and, hence, its bargaining strength. The Board’s goal is to find a middle-ground position, to allocate power between labor and management by “striking the balance” in the appropriate place, with units that are neither too large nor too small. Id. (citations omitted).

There appears to be no definitive pre-rule precedent regarding units in blood banks nor did the Board analyze blood bank employees during the rulemaking proceedings. The parties have not cited and research has not disclosed any post-Rule cases involving blood banks or blood bank-type operations having particular relevance to this proceeding, where the Petitioner seeks to represent only a portion of those non-professional employees within the Product Management Department who are engaged in the manufacture and testing of blood and blood products and the employees who maintain and repair the equipment used within that department.

B. Traditional Community of Interest Factors

The traditional factors in determining whether employees share a community of interest warranting their inclusion within a particular bargaining unit are: 1) the degree of functional integration between employees; 2) common supervision; 3) nature of employee skills and job functions; 4) interchange and contact among employees; 5) work situs; 6) general working conditions; and 7) fringe benefits. See Washington Palm, Inc. 314 NLRB 1122, 1126-1127 (1994).

1. Functional Integration

All of the employees working in the Product Management Department, including the HSSIs and the Inventory Manager, which classifications the Petitioner seeks to exclude from the unit, are involved in the receipt, processing and packaging of blood and blood products for the Employer's customers. The Employer's operation has many steps, from receiving the incoming product from the blood mobiles through the processing, breaking down into components, testing, labeling and shipment of the finished product to customers. Each step of the production process is dependent on the prior step. Due to production needs, both the Components and Hospital Services areas operate continuously and the Quarantine and Labeling and Quality Control areas operate continuously on weekdays and also operate on weekends, albeit not 24 hours per day.

The Petitioner argues that all of the HSSIs and the Inventory Manager should be excluded from the unit petitioned for herein because these employees normally have no risk of exposure to untested blood which could be tainted with AIDS or hepatitis. While this is an issue of concern to employees, it does not negate the fact that the HSSIs and the Inventory Manager are involved in the Employer's production process, albeit at the stage where they are packing tested blood for shipment. To separate a department of employees involved in such an integrated production process on the basis of the stage of production in which they work would be an inappropriate consideration and would unnecessarily fragment the unit.

The PESA Specialists are involved in the production process to the extent that they perform certain maintenance and cleaning functions on the equipment used by the production management employees. While the vast majority of their work relates to the equipment used in blood collections, the PESA Specialists spend at least 25 percent of their time repairing and maintaining equipment used in the Product Management Department. Moreover, even when the PESA Specialists work on equipment unrelated to Product Management, they do so in their workroom located in the envelope where the Product Management employees work. The PESA specialists work on weekdays and are physically present in the Components area one day per week; however, they can be called into the area to make minor repairs to a piece of equipment.

Based on the record, I find that there is a substantial degree of functional integration among the nonprofessional employees in the Product Management Department. The status of the PESA Specialists is discussed *infra*.

2. Common supervision

The TSIs in Components are supervised by Components Supervisors and Assistant Director Schmall. The TSIs and IIs in Quarantine and Labeling are supervised only by the Quarantine and Labeling Supervisors inasmuch as the Assistant Director position in that area is currently vacant. The TSIs in Quality Control report to the Quality Control Supervisor and Assistant Director Boerstler. Ultimately all of the employees in the Product Management Department are

overseen by Director of Manufacturing Deshane. Since February 2008, the PESA Specialists have been part of the Operations Support Department, and thus are administratively separate from the Product Management Department. The PESA Specialists report to Interim Manager Elchin and are ultimately overseen by Division Director Lisa Dell. I note that differences in supervision do not necessarily mandate excluding differently supervised employees. Hotel Services Group, Inc., 328 NLRB 116, 117 (1999); Texas Empire Pipe Line Co., 88 NLRB 631, 632 (1950).

3. The nature of employee skills and job functions

The job descriptions in the record set forth requirements for education and experience. The TSI positions in Components and Quarantine Labeling and the HSSI and HSSI–Customer Service positions require a high school or equivalent education. For TSIs, the Employer prefers previous labor or manufacturing training or experience. For HSSIs, the Employer prefers previous customer service experience. HSSI–Customer Service must have customer service experience and familiarity with the NBCS Computer system. The Hospital Services Inventory Manager is also required to have a high school education along with one year blood center experience. Likewise, the Component Lab Shift Coordinator must have a high school education and previous experience in a laboratory, or preferably, a blood center setting.

TSIs in both Quarantine and Labeling and Quality Control must have an Associate’s degree or meet certain experience requirements. The Employer prefers employees in this position to have certain medical certification, but the record shows that not all of the TSIs have this certification. TSIs are required to have an Associate’s degree, but a Bachelor’s degree is preferred along with a relevant certification.³⁷

PESA Specialists II must have a high school education along with strong math skills. The Employer prefers those with equipment maintenance experience or training. PESA Specialist IIIs

³⁷ Two of the TSIs have Bachelor’s degrees, while the other TS III has 8 to 10 years of experience but does not have a degree. None of the TSIs have certifications relating to the type of work these employees perform. The record indicates that there are MLT, MT or BB certifications. The record does not reflect what these initials stand for, but they appear to be medical technology and blood bank certifications.

must have a Bachelor's degree in a health or science related program or credits toward a baccalaureate. In addition, the Employer requires a maximum security clearance and prefers they obtain one of several certifications. All of the employees involved herein, including the PESA Specialists, are required to complete OSHA training for blood handlers.

4. Interchange and Contact

There are few examples of interchange among the employees. However, the record does indicate some shared duties among TSIs and HSSIs. Both TSIs in Quarantine and Labeling and the HSSIs label blood and blood products. Both groups of employees, along with a PESA Specialist, will unload and reload refrigerators and freezers in case of malfunction. In addition, the record reflects the recent transfer of the responsibility to irradiate products from the TSIs to the HSSIs. Although it has limited significance, the record further reflects that prior to becoming HSSIs virtually all of the HSSIs previously worked as TSIs. The TSIs do not interchange with the PESA Specialists and they do not perform any of the same functions.

The functional integration discussed above results in a significant amount of work-related contact among the employees working in the GMP. Although the TSIs and HSSIs do not work on the Employer's product together, except in the case of freezer malfunction when they unload product, there is evidence that the two groups consult with each other during the work day. For instance, TSIs in Components and HSSIs discuss production quantities of various products and when various products will be available. At times, an HSSI will initiate a Components Status Change Request requiring the HSSI to ask a TSI to retrieve blood. These change requests occur in connection with a donor call back³⁸ conversation. One TSI in Components testified that his duties included bringing plasma to the Hospital Services refrigerator. In the labeling area, TSIs will deliver apheresis product to the Hospital Services area where an HSSI will take the product and put it on the rotator.

³⁸ Donors are asked to call the facility if they become ill after giving a blood donation. On day shifts, these calls are handled by donor suitability staff. After hours, these calls are handled by the HSSIs.

The TSIs in the Quarantine and Labeling area consult with TSIs and HSSIs regarding the status of testing to inform them as to which products are ready for labeling. On second shift, one of the TSIs stated that she communicates primarily with the Hospital Services Supervisor to ask about hospital orders for pedi packs.

The PESA Specialists work in the Components lab every Monday when they clean the centrifuges. It appears that additional contacts occur every week when TSIs call PESA Specialists regarding other equipment repair issues. The PESA Specialists' regularly scheduled contact with TSIs in Quarantine and Labeling and with the HSSIs in Hospital Services is less frequent. In this regard, the record reflects that monthly preventative maintenance on label printers and calibrated thermometers takes place in these areas. However, when they are not in the Components lab, the PESA specialists perform work in a work room which is located in the GMP across the hall from the Components lab. In its brief, the Employer argues that even when the PESA specialists are working in the GMP they are often performing repairs on equipment used by Collections Department employees and thus their work is unrelated to the work of the Product Management Department. The record does establish that the PESA specialists spend 75 percent of their time in their workroom in the GMP maintaining and repairing equipment used by Collection Department employees, whereas the other 25 percent of their time is spent performing repair and maintenance on equipment used in the manufacturing process.

5. Work Situs

All of the employees in both the unit urged appropriate by the Petitioner and the unit urged appropriate by the Employer perform their work primarily on the first floor of the facility in the GMP. However, the PESA specialists do travel off site approximately once per month to perform maintenance, testing and inventory work at collections sites.

6. General Working Conditions and Fringe Benefits

All of the Employer's hourly employees are covered by identical personnel policies and procedures, wage grade system, and benefits package. They must punch a time clock. The

employees eat in a common lunch room and have access to two break areas at the facility. Because of the risk of contamination in the GMP area, where all of the employees involved in this proceeding work, they wear lab coats, gloves, closed toed shoes and a face mask.

In evaluating all of the relevant factors, I note that the PESA Specialists work different hours, perform different work and are separately supervised in the Operations Support Department. I also note that their work takes them off site periodically. In addition, the vast majority of their time is spent on equipment used by collections staff and thus their work is not primarily involved in the production process. Moreover, the PESA Specialists do not interchange with the Production Department employees.

However, I have considered the Petitioner's desire to include the PESA Specialists in the unit. In addition, the record suggests that the PESA Specialists have more contact with the employees who work in the GMP than with any other employees at the facility, notwithstanding their nominally separate administrative grouping. In this regard, the PESA Specialists spend a significant portion of their time repairing and maintaining regulated equipment that is uniquely integrated in the Employer's manufacturing process. In addition, the PESA Specialists are physically located in either their workroom or in the Components lab in the GMP throughout most of their work time. These factors tend to show a community of interest with the other employees in the petitioned-for unit.

Finally, I note that within the Operations Support Department there are warehouse utility workers and other maintenance employees. The record fails to reflect any interchange and contact between these employees and the PESA Specialists.³⁹ Based on the above and the record as a whole, I am unable to conclusively determine the unit placement of the PESA Specialists. Accordingly, I shall permit the PESA Specialists to vote subject to challenge in the election directed herein.

³⁹ As noted previously, the Communications Workers of America represents a group of nonprofessional employees including various collection specialists. As noted herein, the CWA claimed no interest in this proceeding.

As to the HSSIs and the Inventory Manager, I have considered the functional integration of work duties of the employees involved in the manufacturing process, the degree of interaction and many similarities in working conditions and skills between the HSSIs and the Inventory Manager and the other employees in the petitioned-for unit, and I find that the HSSIs and the Inventory Manager share a strong community of interest with the employees in the petitioned-for unit which requires their inclusion in that unit. This is particularly true in light of the unique nature of the Employer's manufacturing process and the highly specialized and restricted area in which that process occurs. Moreover, this conclusion recognizes the concerns which the Board expressed in Park Manor relating to the rulemaking proceedings and its desire to find appropriate units in the health care setting which recognize the respective parties' interests while also avoiding undue proliferation. Accordingly, I find that an appropriate unit, including the petitioned-for employees, must also include the HSSIs and the Inventory Manager.

C. The Supervisory Status of Shift Coordinators and TSIIIs

As noted above, the Employer, contrary to the Petitioner, contends that the Shift Coordinators are statutory supervisors based on their authority to assign and responsibly direct employees and to effectively recommend rewards and discipline for other employees through their involvement with the work performance assessment process. With respect to the TSIIIs, the Petitioner, contrary to the Employer, maintains that that these employees must be excluded from the unit on the basis that they are supervisors. As noted herein, the Petitioner has not set forth any bases for this contention. There is no evidence in the record that the TSIIIs have authority to hire, transfer, suspend, lay off, recall, promote or discharge other employees or to effectively recommend these actions. Given the fact that TSIIIs oversee the Quarantine and Labeling and Quality Control areas in the absence of a Shift Supervisor, I will examine whether there is sufficient evidence that their oversight involves supervisory assignment or direction of employees. In addition, in that the record reflects the TSIIIs involvement in competency assessments, I will address whether this constitutes authority to reward or discipline.

Supervisors are specifically excluded from the Act's definition of "employee" by Section 2(11) of the Act which defines a "supervisor" as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet the definition of a supervisor set forth in Section 2(11) of the Act, a person needs to possess only one of the 12 specific criteria listed, or the authority to effectively recommend such action. Ohio Power Co. v. NLRB, 176 F.2d 385 (6th Cir. 1949), cert. denied, 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. Harborside Healthcare, Inc., 330 NLRB 1334 (2000). Thus, the exercise of "supervisory authority" in merely a routine, clerical, perfunctory or sporadic manner does not confer supervisory status. Chrome Deposit Corp., 323 NLRB 961, 963 (1997); Feralloy West Corp., 277 NLRB 1083, 1084 (1985).

Possession of authority consistent with any of the indicia of Section 2(11) is sufficient to establish supervisory status, even if this authority has not yet been exercised. See, e.g., Pepsi-Cola Co., 327 NLRB 1062, 1063 (1999); Fred Meyer Alaska, 334 NLRB 646, 649 at fn. 8 (2001). The absence of evidence that such authority has been exercised may, however, be probative of whether such authority exists. See, Michigan Masonic Home, 332 NLRB 1409, 1410 (2000); Chevron U.S.A., 308 NLRB 59, 61 (1992).

In considering whether the putative supervisors involved herein possess any of the supervisory authority set forth in Section 2(11) of the Act, I am mindful that in enacting this section of the Act, Congress emphasized its intention that only supervisory personnel vested with "genuine management prerogatives" should be considered supervisors, and not "straw bosses, leadmen, set-up men and other minor supervisory employees." Chicago Metallic Corp., 273 NLRB 1677, 1688 (1985). Thus, the ability to give "some instructions or minor orders to other employees" does not

confer supervisory status. *Id.* at 1689. Such “minor supervisory duties” do not deprive such individuals of the benefits of the Act. NLRB v. Bell Aerospace Co., 416 U.S. 267, 280-281 (1974), quoting Sen. Rep. No. 105, 80th Cong. 1st Sess., at 4. In this regard, the Board has frequently warned against construing supervisory status too broadly because an individual deemed to be a supervisor loses the protection of the Act. See, e.g., Oakwood Healthcare, Inc., 348 NLRB 686, 689 (2006); Vencor Hospital – Los Angeles, 328 NLRB 1136, 1138 (1999); Bozeman Deaconess Hospital, 322 NLRB 1107, 1114 (1997).

Proving supervisory status is the burden of the party asserting that such status exists. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 711-712 (2001); Arlington Masonry Supply, 339 NLRB 817, 818 (2003); Dean & Deluca New York, Inc., 338 NLRB 1046, 1047 (2003). As a general matter, I note that for a party to satisfy the burden of proving supervisory status, it must do so by “a preponderance of the credible evidence.” Dean & Deluca, *supra* at 1047; Star Trek: The Experience, 334 NLRB 246, 251 (2001). The preponderance of the evidence standard requires the trier of fact “to believe that the existence of a fact is more probable than its non-existence before [he] may find in favor of the party who has the burden to persuade the [trier] of the fact’s existence.” In re Winship, 397 U.S. 358, 371-372 (1970). Accordingly, any lack of evidence in the record is construed against the party asserting supervisory status. See, Williamette Industries, Inc., 336 NLRB 743 (2001); Michigan Masonic Home, 332 NLRB at 1409. Moreover, “[w]henver the evidence is in conflict or otherwise inconclusive on a particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” Phelps Community Medical Center, 295 NLRB 486, 490 (1989). Consequently, mere inferences or conclusionary statements without detailed specific evidence of independent judgment are insufficient to establish supervisory status. Sears, Roebuck & Co., 304 NLRB 193 (1991).

The Board revisited the issue of supervisory status in Oakwood Healthcare, Inc., 348 NLRB 686 (2006), in light of the Supreme Court’s holding in Kentucky River. See also, Croft Metals, Inc., 348 NLRB 717 (2006) and Golden Crest Healthcare Center, 348 NLRB 727 (2006), issued at the

same time as Oakwood. In Oakwood, the Board addressed the Supreme Court's rejection of the Board's interpretation of Section 2(11) in the healthcare industry as being overly narrow ,and adopted "definitions for the term 'assign,' 'responsibly to direct,' and 'independent judgment' as those terms are used in Section 2(11) of the Act." Oakwood, supra, 348 NLRB at 687-688.

With regard to the Section 2(11) criterion "assign," the Board considered that this factor shares with other Section 2(11) criteria the "common trait of affecting a term or condition of employment" and determined to construe the term "assign" "to refer to the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or a task which must involve "significant overall duties," not ad hoc instructions to perform a discrete task. The Board reasoned that, "It follows that the decision or effective recommendation to affect one of these – place, time, or overall tasks – can be a supervisory function." Id. The Board clarified that, ". . . choosing the order in which the employee will perform discrete tasks within those assignments (e.g., restocking toasters before coffeemakers) would not be indicative of exercising the authority to 'assign.'" Id.

In Oakwood, the Board explained that, "responsible direction," in contrast to "assignment," can involve the delegation of discrete tasks as opposed to overall duties. 348 NLRB at 690-692. The Board reasoned, however, that "for direction to be 'responsible,' the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employees are not performed properly." In clarifying the accountability element for "responsibly to direct" the Board noted that, "to establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action if necessary." In other words, it also must be shown that there is a prospect of adverse consequences to the person directing the work if the work is not performed properly or no corrective action is taken.

Assignment or responsible direction will, as noted above, produce a finding of supervisory status only if the exercise of independent judgment is involved. Independent judgment will be found where the alleged supervisor acts free from the control of others, is required to form an opinion by discerning and comparing data, and makes a decision not dictated by circumstances or company policy. Id. at 692-694. Independent judgment requires that the decision “rise above the merely routine or clerical.” Ibid.

Based on the record evidence, I find that the Employer has failed to sustain its burden of establishing that the Shift Coordinators are statutory supervisors. I further find that the Petitioner has failed to sustain its burden of establishing that the TSIIIs are statutory supervisors.

1. Shift Coordinators and TSIIIs do not recommend discipline or reward employees

It is well settled that the authority to discipline must be established by a showing that the putative supervisor’s participation in the disciplinary process leads to a personnel action without independent review or investigation by other managerial or supervisory personnel. Franklin Home Health Agency, 337 NLRB 826, 830 (2002), citing Beverly Health and Rehabilitation Services, Inc., 335 NLRB 635 (2001). The Board has repeatedly held that the mere exercise of a reporting function that does not automatically lead to further discipline or adverse action against the employee does not establish supervisory authority. See, Illinois Veterans Home At Anna L.P., 323 NLRB 890 (1997); Ten Broeck Commons, 320 NLRB 806, 812 (1996). It is clear from the record that the Shift Coordinators could not impose or effectively recommend discipline and that such decisions are made by the Shift Supervisor or higher management. In the only two examples cited of a Shift Coordinator recommending discipline, the Shift Coordinator merely reported the incidents to higher management and had no further input into the matter or knowledge of the results of the report. In view of the record evidence, I conclude that the Employer has failed to establish that Shift Coordinators effectively recommend discipline.

It is well settled that the authority to evaluate is not an indicia of supervisory authority if the evaluation does not affect employee status or tenure. Volair Contractors, Inc., 341 NLRB 673

(2004); Williamette Industries, 336 NLRB 743 (2001). Shift Coordinators are asked to provide input for the TSIs' yearly work performance assessments, which are completed by either Assistant Director Schmall or the Components Supervisors. The Shift Coordinators do not complete performance reviews, do not recommend the amount of any wage increase and do not see the performance assessment once it is completed. Thus, in these circumstances, giving input for work performance assessments does not establish the authority to evaluate or reward employees.

TSIIIs and Shift Coordinators are required to become instructors so that they, along with Supervisors, can perform competency assessments. Performing a competency assessment involves either observing or interviewing staff members about the regulated tasks they perform. In this way the Employer ensures that the tasks are being performed correctly. There is no indication that a consequence of the competency assessment has ever been either discipline or reward. Moreover, staff members also have the opportunity to become instructors and perform these assessments. The performance of competency assessments does not involve supervisory authority.

2. Shift Coordinators and TSIIIs do not assign work

Although Chief Manufacturing Executive Pamela Miles-Sharp testified that Shift Coordinators assign tasks to the employees in the Component lab in the absence of Supervisors, and the job description indicates that the Shift Coordinators assign duties to staff and ensure that those duties are performed according to pertinent procedures, the record discloses that most of the jobs are routine and that the only "assignment" involves a determination of who would perform duties such as hanging, segmenting, spinning, expressing and racking the blood. In this regard, a schedule or task list assigning each TSI to a particular task for a certain period of time is completed by the Supervisor. All of the TSIs can perform all of the duties. When they are finished with the duty assigned on the schedule or task list, the TSIs generally move themselves to where additional help is needed. Clearly, even if Shift Coordinators directed TSIs to assist with other tasks when their work was completed, this type of direction does not establish independent judgment.

Miles-Sharp acknowledged that TSIIIs oversee the Quarantine and Labeling area and Quality Control area in the absence of one of the Supervisors. According to the Employer, the TSIIIs act as lead technicians. The record also indicates that the schedule in the Quarantine and Labeling area is prepared by a TSIII and it is then passed on to the Supervisor. There is no other evidence in the record concerning assignment of duties by the TSIII.

The Board has held that designating a nursing staff person to regularly administer medications to a patient or group of patients would constitute assignment of a significant overall task, suggestive of supervisory authority, but that a one time directive to give medication to a specific patient would not be “assignment”. Oakwood Healthcare, Inc., 348 NLRB at 689 (2006).⁴⁰ I find the situation at hand to be more analogous to the latter example. Additionally, there is insufficient evidence in the record that there would be any adverse consequence to an employee for failing to do as a Shift Coordinator instructed. See, Golden Crest Healthcare Center, 348 NLRB 727, 731 (2006).

The appropriate test for determining the status of employees who substitute for supervisors is whether the part-time supervisors spend a regular and substantial portion of their working time performing supervisory tasks or whether such substitution is merely sporadic and insignificant. In this case the Shift Coordinators and TSIIIs fill in if the Shift Supervisor in their area is on vacation or sick. They also fill in on weekends on a rotating basis. The Board has long recognized that, regardless of how frequently an employee substitutes for a supervisor, if he or she does not exercise the supervisor's statutory authority while acting as a substitute, then he or she is not a statutory supervisor. See, e.g., Passavant Health Center, 284 NLRB 887, 892 (1987); Boston Store, 221 NLRB 1126, 1127 (1975). In this case, there is no evidence in the record that the Shift Coordinators and the TSIIIs possess any statutory supervisory authority when they substitute for the regular supervisors. Therefore, such substitution does not confer

⁴⁰ In Oakwood, the Board was, in part, distinguishing assignment from direction. The Board indicated that such directives might constitute direction.

supervisory status on them. Further, the possession of some secondary indicia of supervisory authority, such as having an office cubicle in the case of the Shift Coordinators, and attending supervisory meetings in the case of both the Shift Coordinators and the TSIIIs, is insufficient to establish supervisory status because the record fails to show that the shift coordinators and the TSIIIs possess any primary indicia of supervisory authority. See, e.g., SDI Operating Partners, L.P., 321 NLRB 111, 112 fn. 2 (1996).

Although Shift Coordinator Rager testified that Shift Coordinators have the authority to require TSIs to work small amounts of overtime, it appears from the record that there is little independent judgment involved in that the Supervisors have created an “asterisk list” identifying the employees who can be required to work during that month. The decision to require overtime is based simply upon whether the daily production will be completed by the time the shift ends. There is no basis in the record to conclude that the Shift Coordinators exercise any independent judgment in performing this function. In a similar situation, the Board has held that the authority to prevent employees from taking breaks when the store is busy does not constitute supervisory authority. Azusa Ranch Market, 321 NLRB 811, 812 (1996). Thus, the Employer has failed to demonstrate that Shift Coordinators assign work within the meaning of Section 2(11) of the Act by designating employees to a place, appointing employees to a time or giving employees significant overall duties.

In the absence of any specific evidence to establish supervisory oversight of the Quarantine and Labeling or Quality Control areas by a TSIII, I cannot conclude that the TSIIIs can assign work to employees. Similarly, the completion of a work schedule which is given to a Supervisor cannot be the basis for a determination that the burden of proving supervisory status has been met.

3. Shift Coordinators and TSIIIs do not responsibly direct other employees within the meaning of Section 2(11) of the Act

There is little evidence in the record that the Shift Coordinators provide direction of other employees in their work. Although there are times when the Shift Coordinators and TSIIIs are the

highest ranking employees in the Department, this does not compel the conclusion that they are supervisors.

The Shift Coordinators' job description provides that they are responsible to oversee and coordinate component lab activities on the assigned shift. The TSIII job description provides that TSIIIs are responsible for rotating weekend and holiday on-call duties with Technical Supervisors/Quarantine Review to provide department oversight. TSIIIs also review testing records prior to product release. Directives to putative supervisors setting forth supervisory authority are not determinative of their supervisory status. Connecticut Light & Power Co., 121 NLRB 768, 770 (1958).

Even if I were to find that the language in the respective job descriptions suggests that Shift Coordinators and TSIIIs provide direction to other employees, there is no evidence that they responsibly direct employees within the meaning of Section 2(11) of the Act. As stated previously, in Oakwood, the Board interpreted the phrase "responsibly to direct" as follows: "If a person on the shop floor has men under him, and if that person decides what job shall be undertaken next or who shall do it, that person is a supervisor, provided that the direction is both 'responsible' (as explained below) and carried out with independent judgment." Oakwood Healthcare, supra, at 691 (internal quotations omitted). The Board then held that for direction to be "responsible," the person directing the performance of a task must be accountable for its performance. Id. at 692. Further, the Board held that to establish accountability, "it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It must also be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps." Id. at 692.

Under these circumstances, it appears that very little independent judgment is exercised and there is no basis in the record to conclude that a Shift Coordinator or TSIII has been or would be held responsible for another employee's failings in performing the job. Further, although the Shift Coordinators provide some direction to other employees by occasionally telling employees what

discrete tasks they are to perform, most of the work is routine. It has not been established that the Shift Coordinators have been given the authority to take corrective action if their directions are not followed, nor has it been shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps. Oakwood Healthcare, supra, at 692; See also, Armstrong Machine Co., 343 NLRB 1149 (2004) (holding that a senior employee who answered questions from other employees was not a supervisor). Thus, it has not been shown that Shift Coordinators responsibly direct other employees within the meaning of the Act. See, e.g., Lynwood Manor, 350 NLRB No. 489 (2007) (Employer failed to show that RN/LPNs were accountable for their actions in directing the CNAs, since there was no evidence showing that RN/LPNs could be disciplined, receive a poor performance rating, or suffer any adverse consequences in their terms of employment due to a failure in a CNA's performance of routine functions).

As to the TSIIIs, there is no evidence in the record concerning any direction they provide to other employees. The TSIIIs' review of testing records prior to the release of the product appears to be a quality control procedure to ensure that only FDA-cleared products are released to the labelers. The record reveals that TSIIIs and Supervisors also perform this function. In the absence of specific evidence, I cannot conclude that the TSIIIs responsibly direct other employees.

For the foregoing reasons, and based on the record as a whole, I conclude that the Employer has not met its burden of proving that the Shift Coordinators are supervisors within the meaning of Section 2(11) of the Act. I also conclude that the Petitioner has not met its burden of proving that the TSIIIs are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall include Shift Coordinators and TSIIIs in the unit found appropriate herein.

IV. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate⁴¹ for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time nonprofessional employees employed by the Employer in the GMP area of its Johnstown, Pennsylvania facility, including Technical Specialists I-Components, Shift Coordinators-Components, Technical Specialists I-Quarantine and Labeling, Technical Specialists II-Quarantine and Labeling, Technical Specialists II-Quality Control, Technical Specialists III-Quarantine and Labeling and Quality Control, Hospital Services Specialists I, Hospital Service Specialists I-Customer Service and the Inventory Manager-Hospital Services; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 110 a/w International Brotherhood of Teamsters. The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

⁴¹ As noted above, the PESA Specialists II and III are permitted to vote subject to challenge in the election directed herein.

Inasmuch as I have directed an election in a unit larger than that sought by the Petitioner, the Petitioner is hereby given 14 days to submit the additional evidence of showing of interest. These 14 days will be counted from the date of this decision or, if applicable, from the date the Board denies any request for review of the unit findings in this decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all

parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the Regional Office, Two Chatham Center, Suite 510, 112 Washington Place, Pittsburgh, PA 15219, on or before **October 10, 2008**. No extension of time to file this list will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 412/395-5986. Since the list will be made available to all parties to the election, please furnish a total of **two (2)** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.).

If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the

Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001.⁴² This request must be received by the Board in Washington by 5 p.m., EST (EDT), on **October 17, 2008**. The request may **not** be filed by facsimile.

Dated: October 3, 2008

/s/Gerald Kobell

Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD
Region Six
Two Chatham Center, Suite 510
112 Washington Place
Pittsburgh, PA 15219

Classification Index

177-8520-1600
177-8520-2400
177-8520-6200
440-6725-5050

⁴² A request for review may be filed electronically with the Board in Washington, D.C. The requirements and guidelines concerning such electronic filings may be found in the related attachment supplied with the Regional Office's initial correspondence and at the National Labor Relations Board's website, www.nlrb.gov, under "E-Gov." On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-Filing instructions explaining how to file the documents electronically will be displayed.